

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____ X
In Re:

Richard and Desmarie Griffin

Debtor, _____ X

Richard and Desmarie Griffin

Plaintiff,

vs

American Home Mortgage Servicing

Defendant _____ X

Chapter 13

Case No 10-22431

Adv. Case No. 10-8361

AFFIRMATION IN OPPOSITION OF MOTION TO DISMISS CASE

COMES NOW Richard and Desmarie Griffin, the debtor by and through their attorney Joshua N. Bleichman, states that I have knowledge of the following and state the same is true except for those matters stated "upon information and belief" and as to those matters, we believe them to be true.

1. This affirmation is in opposition to American Home Mortgage Servicing, Inc Motion to Dismiss the Adversary proceeding. The motion must be denied.
2. On July 1, 2005, Plaintiff gave a Mortgage to Argent Mortgage Company, LLC.
3. American Home Mortgage Servicing, Inc. (AHMSI), is the servicer for Argent Mortgage Company and Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc.
4. On March 3, 2010, Plaintiff sent a "Qualified Written Request" to Defendant AHMSI requesting information regarding Plaintiff's mortgage account.
5. Upon reviewing Defendant's "QWR" responses, Defendant failed to produce all information requested from them.
6. Defendant did not fully respond to the QWR (see paragraph 15 in the complaint.)
7. Defendant misapplied Plaintiffs' payments as of 2007 to date, and almost every month Plaintiff received a New Principal/Escrow Balance, which is objectionable.

Furthermore there are miscellaneous postings on Plaintiff's account statements. (See Exhibit "A")

8. Plaintiff has suffered monetary damages, for being charged excessive late fees, and his mortgage payments were not getting properly applied, as seen in Exhibit "A".

9. Defendant has breached Plaintiff's contract, by misapplying Plaintiff's monthly mortgage payments.

10. Defendant states (Memorandum of Law pg 8 paragraph 2) that "the complaint points to the Griffins' promissory note as the "contract" in question, but it does not plead that AHMSI is a party to the note. On the contrary, the relationship between a loan servicer and a borrower is not contractual in nature". Defendant's statement is inaccurate, it is fully their responsibility as the servicer for the loan, especially to make sure that the mortgage payments are applied properly.

11. Defendant negligently misapplied Plaintiff's mortgage payments and charged excessive late fees, and did not fully respond to the "Qualified Written Request".

12. Furthermore, this Motion must be denied because of Defendant's failure to include a Motion.

WHEREFORE Plaintiff respectfully requests that Defendant's Motion to Dismiss Adversary Proceeding is denied, and Plaintiff be awarded sanctions and attorney fees for opposing a frivolous matter.

Dated: June 25, 2010
Spring Valley, NY

/s/ Joshua N. Bleichman
Joshua N. Bleichman
Bleichman and Klein
268 Route 59
Spring Valley, NY 10977
(845)-425-2510

CERTIFICATE OF SERVICE

I, Joshua N. Bleichman, an attorney admitted to practice before this court affirms under the penalties of perjury that I am not a party to this action and that I am over the age of 18 years old. I served the Acknowledgment Affirmation in Opposition of Motion to Dismiss Case on June 25, 2010 by depositing a true copy thereof by Regular Mail in a post-paid wrapper, placing it in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, first class mail, addressed to the following persons:

Jordan M. Smith
Akerman Senterfitt LLP
335 Madison Avenue
Suite 2600
New York, NY 10017

/s/ Joshua N. Bleichman
Joshua N. Bleichman